HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.1970 of 1995
Date of decision : 17.01.2007

Siri Ram and another **.....Petitioners**

versus

Hakam Chand and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : None for the parties.

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ORDER

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order dated 6.2.1988, passed by the learned trial Court, whereby an application filed by the legal heirs of deceased Des Raj, defendant No.2, was dismissed as barred by limitation.

The plaintiff-respondent Nos.1 to 4 filed a suit for declaration to the effect that by virtue of registered Will dated 20.8.1966, they are in possession of equal shares of the land measuring 941 kanals 8 marlas since the date of death of Smt.Kishni and that the Will dated 9.10.1969 propounded by the defendants is fabricated and fictitious. In the said suit, defendant No.2 died and an application for impleading the legal heirs of the deceased defendant No.2, was filed after about 1½ years of the death of the said defendant, by his legal heirs. The said application has been dismissed inter-alia on the ground that no ground for condonation of delay has been mentioned or explained. The legal heirs of the deceased have to prove as to why they did not know about the pendency of the suit and they

should have explained in the application that their father was living separately or his activities were not known to them. As they did not do so, the application was beyond the period of limitation.

The order passed by the learned trial Court is untenable and perverse. It is now understandable that how the legal heirs of the deceased would prove as to why they did not know about the pendency of the suit. There is no circumstance on record which could attribute knowledge of pendency of the suit by the petitioner. Still further, primarily it is for the plaintiff to implead the legal heirs of the deceased. The death of Des Raj is after 11.4.1975, i.e. when Sub Rules 3 & 4 of Order 22 of the Code of Civil Procedure were substituted by this Court contemplating that the suit shall not abate, if no application is made and that the judgment can be pronounced. The learned trial Court has passed the order without taking into consideration such provisions.

Therefore, I am of the opinion that the order passed by the learned trial Court suffers from patent illegality and irregularity and cannot be sustained in law. The present revision petition is allowed. The order passed by the learned trial Court is set-aside. The petitioners are ordered to be impleaded as legal representatives of the deceased, defendant No.2 Des Raj.

The trial Court shall proceed with the Suit in accordance with law, expeditiously.

(HEMANT GUPTA)
JUDGE

January 17, 2007
**mohinder*